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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

L.C., a minor by and through her
guardian *ad litem* Maria Cadena,
individually and as successor-in-
interest to Hector Puga; I.H., a minor
by and through his guardian *ad litem*
Jasmine Hernandez, individually and
as successor-in-interest to Hector Puga;
A.L., a minor by and through her
guardian *ad litem* Lydia Lopez,
individually and as successor-in-
interest to Hector Puga; and
ANTONIA SALAS UBALDO,
individually,

Plaintiffs,

vs.

STATE OF CALIFORNIA; COUNTY
OF SAN BERNARDINO; S.S.C., a
nominal defendant; ISAIAH KEE;
MICHAEL BLACKWOOD;
BERNARDO RUBALCAVA;
ROBERT VACCARI; JAKE ADAMS;
and DOES 6-10, inclusive,

Defendants.

5:22-cv-00949-KK-SHK
Hon. Judge Kenly Kiya Kato

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION IN
LIMINE NO. 3 TO EXCLUDE
EVIDENCE AND TESTIMONY
CONCERNING SHOOTING AND
INJURIES TO THIRD PARTIES
DURING THE SUBJECT
INCIDENT**

Hearing Date: May 15, 2025
Hearing Time: 9:30 a.m.
Location: Courtroom 3
Trial Date: June 2, 2025
Action Filed: June 7, 2022

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On February 17, 2021, in Hesperia, California, CHP Officers and San
4 Bernardino Sheriff's Department Deputies shot and killed Hector Puga. Tragically,
5 Mr. Puga was not the only casualty. While shooting at Mr. Puga, the officer shot
6 into the home of the Botten family, who sustained severe injuries as a result of the
7 incident. J.B., 12 years old at the time, suffered three gunshot wounds to the chest,
8 leading to a collapsed lung, a ruptured spleen, and damage to internal organs.
9 Tanja Dudek-Botten was shot in the face, chest, and right shoulder. Jonathan
10 Botten, Sr. sustained gunshot wounds to both arms, his left hand, and right leg.
11 Additionally, multiple bullets struck the Botten residence, including the front of the
12 home, the screen door, a bedroom window, and the side of the house.

13 Defendants now seek to exclude all references to the fact that three members
14 of the Botten family—completely uninvolved third parties—were shot during the
15 incident. However, the risk of harm to bystanders is highly relevant to the
16 reasonableness inquiry under the Fourth Amendment. Courts have repeatedly
17 recognized that evidence of danger to third parties is relevant to whether a police
18 officer acted reasonably in using deadly force. Moreover, officers are trained to
19 account for bystanders when discharging weapons, and failure to do so directly
20 supports Plaintiffs' federal and state claims.

21 The Court should deny Defendants' Motion in Limine No. 3.

22 **II. LEGAL STANDARD**

23 Evidence is relevant if it has "any tendency to make a fact more or less
24 probable than it would be without the evidence" and "the fact is of consequence in
25 determining the action." Fed. R. Evid. 401. Relevant evidence may be excluded
26 under Federal Rule of Evidence 403 only if its probative value is substantially
27 outweighed by a danger of unfair prejudice.
28

1 **III. ARGUMENT**

2 **A. Evidence of Harm to Bystanders Is Directly Relevant to the**
3 **Reasonableness of Defendant's Use of Force**

4 Evidence related to the Botten family injuries and their testimony about the
5 incident is highly relevant to the question of whether the officers' use of force was
6 reasonable. In evaluating the reasonableness of a use of force, courts consider not
7 only the threat posed by the suspect but also whether the officer acted in a manner
8 that reasonably safeguarded bystanders. "[T]he evidence of potential harm and
9 injury to citizens and bystanders is relevant in determining whether the actions
10 taken were reasonable." *Ymelda Elena, et al. v. City of Los Angeles, et al.*, No. CV
11 22-7651-KK-KSX, 2025 WL 1144824, at *2 (C.D. Cal. Mar. 19, 2025) (citing
12 *Boyd v. Benton County*, 374 F.3d 773, 779 (9th Cir. 2004)).

13 As explained in *Hulsted v. City of Scottsdale*, 884 F. Supp. 2d 972, 990 (D.
14 Ariz. 2012), beyond the three major factors, the Ninth Circuit has identified "a
15 number of other factors relevant to a *Graham* analysis," including whether officers
16 "consider[ed] whether they might injure innocent bystanders in addition to the
17 targets of the force." *Id.*; see *Boyd v. Benton Cty.*, 374 F.3d 773, 779 (9th Cir.2004)
18 (holding that officers violated the Fourth Amendment when they threw a "flash-
19 bang" grenade into an apartment in part because their actions endangered "innocent
20 bystanders" in the room).

21 This Court considered a very similar question in *Ymelda Elena*, 2025 WL
22 1144824, an excessive force case where officers used lethal force against a man
23 who was assaulting someone at a shopping mall. Tragically, officers were shooting
24 at the suspect even though there was a dressing room in their backdrop, and at least
25 one shot went into the dressing room, killing an innocent 14-year-old girl. Officers
26 moved to exclude evidence related to the death of the young woman, based on the
27 same arguments Defendants make here. The Court denied their motion, noting that
28 the evidence of the harm cause to this innocent bystander was "highly relevant" to

1 the reasonableness of the officers conduct. *Id.* at *2 (C.D. Cal. Mar. 19, 2025); see
2 also *United States v. Garcia-Zarate*, 419 F. Supp. 3d 1176, 1178 (N.D. Cal. 2020)
3 (third-party injury “inextricably intertwined” with shooting incident).

4 The fact that Defendants shot three innocent bystanders is not merely a
5 tragic collateral detail; it speaks directly to whether the officers considered their
6 surroundings and acted with due care when discharging deadly force. Indeed,
7 officers are routinely trained to consider their backdrop when discharging their
8 service weapons. In this case, Officer Rubalcava testified that although he was
9 aware he was in a residential area, he failed to account for the presence of homes
10 behind his line of fire (Rubalcava Dep. 20–21). Officer Kee similarly
11 acknowledged that he was trained to consider residences or businesses in the
12 background when deciding whether to fire (Kee Dep. 54–55). Officer Adams
13 confirmed that one of his concerns during the incident was the potential for
14 innocent people to be struck (Adams Dep. 55).

15 Plaintiffs’ expert, Roger Clark, confirms that bystander safety is emphasized
16 in training and must be considered in tactical decision-making. (Clark Report
17 8,9,10)

18 This evidence directly supports Plaintiffs’ theory that the officers’ conduct
19 violated basic police protocols and supports claims under both the Fourth
20 Amendment and California law. Therefore, the motion should be denied.

21 **B. Any Risk of Prejudice Is Outweighed by the Evidence’s**
22 **Substantial Probative Value**

23 While the Court has discretion to exclude unfairly prejudicial evidence, this
24 case does not present such a case. The injuries to the Botten family are emotional,
25 but they are also a central and foreseeable consequence of the officers’ actions. The
26 Ninth Circuit has repeatedly recognized that Rule 403 is a balancing test and that
27 “unfair prejudice” does not mean simply that the evidence is damaging. *See United*
28 *States v. Haischer*, 780 F.3d 1277, 1282 (9th Cir. 2015).

1 To the extent the Court has concerns about potential jury confusion or
2 emotional reaction, Plaintiffs would not object to a limiting instruction clarifying
3 that the evidence of bystander injury is to be considered only for the purpose of
4 evaluating the reasonableness of the use of force.

5 **IV. CONCLUSION**

6 For the foregoing reasons, Plaintiffs respectfully request that the Court deny
7 Defendants' Motion in Limine No. 3. The evidence concerning harm to
8 bystanders—specifically the injuries to the Botten family—is highly probative of
9 whether Defendants' use of force was reasonable under the circumstances. Its
10 exclusion would improperly withhold relevant context from the jury and prevent
11 full consideration of the totality of the circumstances.

12
13 Respectfully Submitted,

14
15 Dated: April 24, 2025

LAW OFFICES OF DALE K. GALIPO

16
17 By: /s/ Hang D. Le
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20 *Attorneys for Plaintiffs L.C., I.H., A.L., and*
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Certificate of Compliance

The undersigned, counsel of record for Plaintiffs L.C., I.H., A.L., and Antonia Salas Ubaldo, certifies that this brief contains **1,059** words, which complies with the 7,000 word limit of L.R. 11-6.1.

Dated: April 24, 2025

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